



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA899]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off of Coastal Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed modification of an incidental harassment authorization; request for comments.

SUMMARY: NMFS received a request from Dominion Energy Virginia (Dominion) on February 5, 2021, for a modification to the incidental harassment authorization (IHA) that was initially issued on August 28, 2020 and subsequently modified and issued on December 11, 2020. The initial IHA as now modified allowed Dominion to take nine species of marine mammals, by Level B harassment, incidental to marine site characterization surveys conducted in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Offshore Virginia (Lease No. OCS-A-0483) as well as in coastal waters where an export cable corridor will be established. Dominion has recently been recording take of common dolphin (*Delphinus Delphis*) by Level B harassment at a rate that would exceed their authorized take limit. Therefore, NMFS is proposing to modify the IHA to increase authorized take by Level B harassment of common dolphin. The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA and no additional take was requested for other species. NMFS will consider public comments on the

requested modification prior to making any final decision and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.pauline@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

History of Request

On February 7, 2020, NMFS received a request from Dominion for an IHA to take marine mammals incidental to marine site characterization surveys in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS Offshore Virginia (Lease No. OCS-A-0483) as well as in coastal waters where an export cable corridor will be established in support of the offshore wind project. Dominion’s planned marine site characterization includes high-resolution geophysical

(HRG) survey activities. The application was deemed adequate and complete on May 12, 2020. We published a notice of proposed IHA and request for comments in the **Federal Register** on June 17, 2020 (85 FR 36562). We subsequently published the final notice of our issuance of the IHA in the **Federal Register** on September 8, 2020 (85 FR 55415), with effective dates from August 28, 2020, to August 27, 2021. NMFS authorized the take by Level B harassment of 9 species (10 stocks) of marine mammals including bottlenose dolphin (*Tursiops truncatus*), pilot whale (*Globicephala spp.*), common dolphin (*Delphinus delphis*), Atlantic white sided dolphin (*Lagenorhynchus acutus*), Atlantic spotted dolphin (*Stenella frontalis*), Risso's dolphin (*Grampus griseus*), harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), and gray seal (*Halichoerus grypus*),

On September 29, 2020, NMFS received a request from Dominion for a modification to the IHA that was issued on August 28, 2020 (85 FR 55415; September 8, 2020). Since the issuance of the initial IHA, Dominion had been recording large pods of Atlantic spotted dolphin within the Level B harassment zone such that they were approaching the authorized take limit for this species. Therefore, NMFS published a notice of proposed IHA modification that included a 15-day public comment period (85 FR 71881; November 12, 2020). NMFS subsequently issued a modified IHA to Dominion that increased authorized take of spotted dolphin by Level B harassment (85 FR 81879; December 12, 2020). The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA. The expiration date of the IHA remained the same (August 27, 2021) as in the initial IHA.

On February 5, 2021, NMFS received a subsequent request from Dominion for a modification to the IHA that had previously been modified and issued (85 FR 81879; December 12, 2020). Dominion informed NMFS that they were recording take of common dolphin (*Delphinus Delphis*) by Level B harassment at a rate that would exceed

the authorized limit for this species. Therefore, NMFS is proposing to again modify the IHA to increase authorized take by Level B harassment of common dolphin. The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA and recently issued modified IHA. No additional take was requested for other species.

Description of the Proposed Activity and Anticipated Impacts

The modified IHA as proposed would include the same HRG surveys in the same locations that were described in the initial IHA and recently modified IHA. The mitigation, monitoring, and reporting measures remain the same. NMFS refers the reader to the documents related to the initial IHA issued on August 28, 2020, for more detailed description of the project activities. These previous documents include the notice of proposed IHA and request for comments (85 FR 36562; June 17, 2020) and notice of our issuance of the IHA in the **Federal Register** (85 FR 55415; September 8, 2020). Additional information may be found in the notice of issuance of the recently modified IHA (85 FR 81879; December 12, 2020).

Detailed Description of the Action

A detailed description of the survey activities is found in these previous documents. The location, timing, and nature of the activities, including the types of HRG equipment planned for use, daily trackline distances and number of survey vessels (4) are identical to those described in the previous notices.

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this proposed modified IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature. Note that in the 2020 Draft U.S. Atlantic and Gulf of Mexico Draft Marine Mammal Stock Assessment

Report (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>) the abundance of the Western North Atlantic stock of common dolphin has increased slightly from 172,825 to 172,974 while the Annual Mortality/Serious Injury value has decreased slightly from 419 to 399. NMFS has determined that this information does not affect our analysis of impacts under the initial IHA and recently modified IHA.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the initial and recently modified IHA. There is no new information on potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of IHA for the initial authorization (85 FR 55415; September 8, 2020). Revised estimated take numbers of spotted dolphin may be found in the previously issued modified IHA (85 FR 81879; December 12, 2020). The HRG equipment that may result in take, as well as the source levels, marine mammal stocks taken, marine mammal density data and the methods of take estimation applicable to this authorization remain unchanged from the initial and recently modified IHA. The proposed number of authorized takes is identical to those found in the recently modified IHA with the exception of spotted dolphin.

NMFS had authorized 68 takes of common dolphin by Level B harassment in the initial IHA (85 FR 55415; September 8, 2020) and recently modified IHA (85 FR 81879; December 12, 2020). Since January 17, 2021, Dominion has recorded a total of 65 common dolphins within the Level B harassment zone. Sighting events have ranged from a single dolphin to a group of up to 42 individuals. It appears that the sudden increase in Level B take for common dolphins is due to the animals' approach to the vessel for both

bow riding and swimming alongside. The duration of these events has varied from several minutes to many hours. Their behavior may be due to curiosity and perhaps an enhanced feeding opportunity provided (after dusk) by the lighted vessels. The increase in common dolphins appears to be seasonal, with most (62) of the Level B harassment takes occurring between January 17 and January 27, 2021, as well as three additional takes recorded in February. There was no observed take of common dolphin during the preceding phases of the survey in the summer and fall of 2020. Dominion has directed vessels to shut-down at night, during periods of low visibility, or whenever common dolphins are sighted to avoid further accumulation of take. The need for frequent, lengthy shut-downs has the potential to severely impact the overall project schedule. That would result in the need for additional survey days on the water as well as increased cost and risks associated with extending the project schedule.

Dominion observed common dolphins over eight operational survey days as shown in Table 1. Note that many of these animals were sighted outside of the Level B harassment zone and, therefore, were not recorded as takes. The 62 takes over eight days averages out to just under eight takes per day. Given this information Dominion has conservatively requested the take of one pod of 10 animals every day for the remaining 60 survey days. NMFS concurs and is proposing 600 additional takes of common dolphin by Level B harassment beyond the 68 takes authorized in the initial IHA and recently modified IHA. The expiration date of the IHA would remain unchanged as August 27, 2021.

Table 1– Common dolphin detection events during Dominion Energy HRG survey activities

Vessel Name	Number of common dolphin detection events	Number of events that resulted in Level B harassment takes	Total number of Level B harassment takes	Min pod size	Max pod size
R/V Minerva	2	0	0	7	15

R/V Minerva	4	2	14	6	12
R/V Minerva	4	0	0	6	12
R/V Minerva	3	1	10	1	10
R/V Minerva	4	2	15	4	10
R/V Minerva	2	2	19	7	42
R/V Minerva	3	1	4	1	6
R/V Minerva	2	0	0	4	15

The total number of incidental takes by Level B harassment, including proposed modified common dolphin takes, are shown in Table 2. The proposed take represents 0.39 percent of the western North Atlantic stock of common dolphin. Take by Level A harassment was not requested, nor does NMFS anticipate it. NMFS did not authorize Level A harassment in the initial or recently modified IHA and is not proposing to do so as part of this proposed modification.

Table 2 —Total Numbers of Authorized Takes by Level B Harassment and as a Percentage of Population

Species	Totals	
	Take Authorization (No.)	Instances of Take as Percentage of Population ¹
Short-finned pilot whale	12	0.06
Bottlenose dolphin (Offshore)	511	0.81
Bottlenose dolphin (Southern Migratory Coastal)	224	6.5
Common dolphin (proposed adjusted)	668	0.39
Atlantic white-sided dolphin	44	0.12
Spotted dolphin	2,427	4.38
Risso's dolphin	6	0.08
Harbor porpoise	39	0.09
Harbor seal ²	35	0.02
Gray Seal ²		0.06

¹ Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 2 in **Federal Register** final notice of issuance of the IHA (85 FR 55415; September 8, 2020). In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For bottlenose dolphins, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins are derived from NMFS SARs (Hayes *et al.* 2019).

² Pinniped density values reported as "seals" and not species-specific.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures described here are identical to

those included in the **Federal Register** notices announcing the issuance of the initial IHA (85 FR 55415; September 8, 2020) and the recently modified IHA (85 FR 81879; December 12, 2020) as well as the discussions of the least practicable adverse impact included in those documents remain accurate

Establishment of Exclusion Zones (EZs) — Marine mammal EZs must be established around the HRG survey equipment and monitored by protected species observers (PSOs) during HRG surveys as follows:

- 500-m EZ is required for North Atlantic right whales;
- During use of the GeoMarine Dual 400 Sparker 800J, a 100-m EZ is required for all other marine mammals except delphinid(s) from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops* and seals;
- When only the Triple Plate Boomer 1000J is in use, a 25-m EZ is required for all other marine mammals except delphinid(s) from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops* and seals; 200-m buffer zone is required for all marine mammals except those species otherwise excluded (*i.e.* North Atlantic right whale).

If a marine mammal is detected approaching or entering the EZs during the survey, the vessel operator must adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs must visually monitor a 200-m buffer zone for the purposes of pre-clearance. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.*, anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the EZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The buffer zone is not applicable when the EZ is greater than 100 m. PSOs are also required to observe a 500-m monitoring zone and record the presence of all marine mammals within this zone.

Visual Monitoring — Monitoring must be conducted by qualified protected PSOs who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the initial IHA (85 FR 55415; September 8, 2020) and the recently modified IHA (85 FR 81879; December 12, 2020). Dominion must have one PSO on duty during the day and has committed that a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring must begin no less than 30 minutes prior to ramp-up of HRG equipment and continue until 30 minutes after use of the acoustic source. PSOs must establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and must conduct observations while free from distractions and in a consistent, systematic, and diligent manner. PSOs are required to estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

Pre-Clearance of the Exclusion Zones — Prior to initiating HRG survey activities, Dominion must implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.*, before ramp-up of HRG equipment begins), the Buffer Zone also acts as an extension of the 100-m EZ in that observations of marine mammals within the 200-m Buffer Zone would also preclude HRG operations from beginning. During this period, PSOs must ensure that no marine mammals are observed within 200 meters (m) of the survey equipment (500 m in the case of North Atlantic right whales). HRG equipment must not start up until this 200-m zone (or, 500-m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator must notify a designated PSO of the proposed start of HRG survey equipment as agreed upon

with the lead PSO; the notification time must not be less than 30 minutes prior to the planned initiation of HRG equipment in order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance.

If a marine mammal is observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment must not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.*, minimum 15 minutes for porpoises, and 30 minutes for all other species). The pre-clearance requirement includes small delphinoids. PSOs must also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

Ramp-Up of Survey Equipment — When technically feasible, a ramp-up procedure must be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Survey Area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment must not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment must be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment must be shut down (as described below).

Shutdown Procedures — If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty has the authority to delay the start of survey operations or

to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The vessel operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment must only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ.

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.*, the animal is not required to fully exit the Buffer Zone where applicable) or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.*, less than 30 minutes) for reasons other than mitigation (*e.g.*, mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement is waived for certain genera of small delphinids (*i.e.*, *Delphinus*, *Lagenorhynchus*, *Stenella*, or *Tursiops*) under certain circumstances. If a delphinid(s) from these genera is visually detected within the EZ shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for

which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (100 m or 25 m), shutdown must occur.

Vessel Strike Avoidance — Dominion must comply with vessel strike avoidance measures as described in the **Federal Register** notices of the issuance of initial IHA (85 FR 55415; September 8, 2020) and recently modified IHA (85 FR 81879; December 12, 2020).

Seasonal Operating Requirements — Dominion will conduct HRG survey activities in the vicinity of the North Atlantic right whale Mid-Atlantic seasonal management area (SMA) near Norfolk and the mouth of the Chesapeake Bay. Activities conducted prior to May 1 must comply with the seasonal mandatory speed restriction period for this SMA (November 1 through April 30) for any survey work or transit within this area.

Throughout all phases of the survey activities, Dominion must monitor NOAA Fisheries North Atlantic right whale reporting systems for the establishment of a dynamic management area (DMA). If NMFS establishes a DMA in the Lease Area or cable route corridor being surveyed, within 24 hours of the establishment of the DMA, Dominion is required to work with NMFS to shut down and/or alter activities to avoid the DMA.

Training — Project-specific training is required for all vessel crew prior to the start of survey activities.

Reporting — PSOs must record specific information on the sighting forms as described in the **Federal Register** notices of the issuance of the initial IHA (85 FR 55415; September 8, 2020) and the recently modified IHA (85 FR 81879; December 12,

2020). Within 90 days after completion of survey activities, Dominion must provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

In the event of a ship strike or discovery of an injured or dead marine mammal, Dominion must report the incident to the OPR, NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the information listed in the **Federal Register** notices of the issuance of the initial IHA (85 FR 55415; September 8, 2020) and the recently modified IHA (85 FR 81879; December 12, 2020).

Based on our evaluation of the applicant's measures in consideration of the increased estimated take for spotted dolphins, NMFS has re-affirmed the determination that the required mitigation measures provide the means effecting the least practicable impact on spotted dolphins and their habitat.

Preliminary Determinations

Dominion's HRG survey activities and the mitigation, monitoring, and reporting requirements are unchanged from those covered in the initial IHA. The effects of the activity, taking into consideration the mitigation and related monitoring measures, remain unchanged from those stated in the initial IHA, notwithstanding the increase to the authorized amount of common dolphin take. Specifically, the Level B harassment authorized for common dolphins is expected to be of lower severity, predominantly in the form of avoidance of the sound source and potential occasional interruption of foraging. With approximately 60 survey days remaining, NMFS is proposing to increase authorized spotted dolphin take by Level B harassment to 668 from 68. Even in consideration of the increased estimated numbers of take by Level B harassment, the impacts of these lower severity exposures are not expected to accrue to the degree that the fitness of any individuals is impacted, and, therefore no impacts on annual rates of recruitment or

survival will result. Further, and separately, the proposed take amount of common dolphin still would be of small numbers of spotted dolphins relative to the population size (less than one percent), as take that is less than one third of the species or stock abundance is considered by NMFS to be small numbers. In conclusion, there is no new information suggesting that our effects analysis or negligible impact finding for common dolphins should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily reaffirmed the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Dominion's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (i.e., the modification of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion

Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the modified IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to modify the IHA to Dominion for conducting marine site characterization surveys in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Offshore Virginia (Lease No. OCS-A-0483) as well as in coastal waters where an export cable corridor will be established in support of the CVOW Commercial Project effective until August 27, 2021. The only change is an increase in the authorized take by Level B harassment of common dolphins from 68 to 668. A draft of the proposed modified IHA can be found at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

Request for Public Comments

We request comment on our proposed modification of the IHA for Dominion's marine site characterization surveys. We also request comment on the potential for renewal of this modified IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization or subsequent Renewal IHA

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the **Description of Proposed Activities and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of Proposed Activities and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:
 - (1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
 - (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 4, 2021.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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